

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARGARET EVE-LYNNE MIYASAKI,  
Plaintiff,  
v.  
KYNA TREACY, et al.,  
Defendants.

Case No. [12-cv-04427-MEJ](#)

**THIRD ORDER TO SHOW CAUSE**

On June 30, 2014, Plaintiff Margaret Eve-Lynne Miyasaki filed her Seventh Status Report, indicating that she was still attempting to effect service of process on Defendant, a citizen of Australia. Dkt. No. 26. This case has now been pending for over two years, and it appears that Plaintiff has not been diligent in her attempts to serve Defendant. For example, in the most recent status report, Plaintiff states that she “intends to file a motion to permit alternative service on defendant shortly.” However, nearly four months have passed since she made that statement, yet no further docket activity has taken place.

Federal Rule of Civil Procedure 4(m) imposes a 120-day time limit on domestic service but does not set a time limit for completing service on a defendant who resides outside of the United States. *See Lucas v. Natoli*, 936 F.2d 432, 432 (9th Cir. 1991). The Ninth Circuit has never specifically imposed any time limit on serving a foreign defendant. However, other circuits have held that “the amount of time allowed for foreign service is not unlimited.” *Nylok Corp. v. Fastener World Inc.*, 396 F.3d 805, 807 (7th Cir. 2005); *see also Feliz v. MacNeill*, 493 Fed. App’x 128, 131 (1st Cir. 2012) (“[C]ourts have leave to dismiss for failure to serve abroad when a plaintiff is dilatory.”).

Accordingly, given that this case has now been pending for over two years, and Plaintiff

1 has not followed through on her statements regarding service, the Court hereby ORDERS Plaintiff  
2 Margaret Eve-Lynne Miyasaki to show cause why this case should not be dismissed for failure to  
3 prosecute. Plaintiff shall file a declaration by November 3, 2014. If a responsive declaration is  
4 filed, the Court shall either issue an order based on the declaration or conduct a hearing on  
5 November 13, 2014 at 10:00 a.m. in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San  
6 Francisco, California. Notice is hereby provided to Plaintiff that the Court may dismiss the case  
7 without a hearing if no responsive declaration is filed. Thus, it is imperative that Plaintiff file a  
8 written response by the deadline above.

9 **IT IS SO ORDERED.**

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11 Dated: October 22, 2014

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14 MARIA-ELENA JAMES  
15 United States Magistrate Judge  
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